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NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING

Pursuant to Northern District of California Civil Local Rule 3-13, Defendant William Koch (“Koch”) submits this Notice of Pendency of Other Action or Proceeding.

Koch respectfully gives notice of three other actions pursuant to N.D. Cal. Civ. L.R. 3-13(a). First, in a case entitled *Oxbow Carbon, LLC et al. v. Martensen et al.*, Case No. 502012CA005386XXXXMB, pending in Circuit Court, Palm Beach County, Florida (the “Florida Action”), Oxbow Carbon, LLC, Oxbow Carbon & Minerals, LLC, and Oxbow Carbon & Minerals, International GmbH (collectively, the “Oxbow Companies”) sued Kirby Martensen, the plaintiff in this case, and two other employees and executives of the Oxbow Companies (collectively, the “Oxbow Executives”) for, among other things, breaching fiduciary and other duties to the Oxbow Companies, usurping corporate opportunity, and conversion. Second, in Contra Costa County Superior Court, Case No. N12-1956, the Oxbow Companies have filed a petition to compel third parties American Frontier (Marine), Inc. (“Frontier”) and Oystein Mathisen (“Mathisen”) to comply with subpoenas for the production of business records that the Oxbow Companies issued to Frontier and Mathisen in the Florida Action. Third, in an action entitled *Oxbow Carbon, LLC, et al. v. American Frontier (Marine), Inc. et al.*, in Contra Costa County Superior Court, Case No. C12-02967, the Oxbow Companies filed a complaint against Frontier, Mathisen, and another Frontier employee and officer based in part on illicit conduct that they perpetrated in concert with the Oxbow Executives.

The relationship among these three actions and the instant case is that each involves the corporate misconduct of Martensen and the other Oxbow Executives. Koch does not believe that any of the above proceedings in the Florida or California state courts can or should be coordinated with this case in this Court, *see* N.D. Cal. Civ. L.R. 3-13(b)(3)(C), because on January 16, 2013, Koch filed motions (1) to dismiss the Complaint (A) under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, (B) under Rule 12(b)(3) for improper venue, or in the alternative to transfer, (C) under Rule 12(b)(6) for failure to state a claim, and (2) to strike

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1 Martensen's punitive damages allegations under Federal Rule of Civil Procedure 12(f). (Dkt. 14.)
2 Accordingly, Koch anticipates that the Court will ultimately dismiss or transfer this case.

3 Dated: January 17, 2013

Respectfully submitted,

4 IRELL & MANELLA LLP

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6 By: /s/ Melissa R. McCormick

7 Melissa R. McCormick
8 Attorneys for Defendant William Koch
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